

Lincoln and the Thirteenth Amendment

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Review

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Samito, Christian G. *Lincoln and the Thirteenth Amendment*. Southern Illinois University Press, \$24.95 ISBN 9780809334247

Lincoln's Constitutionalism

In this splendid little book, Christian G. Samito surveys Lincoln's eventual support of ending slavery by constitutional fiat. Scholars have long argued about Lincoln's true feelings on slavery, and Steven Spielberg's blockbuster biopic proves that this question has resonance outside the academy. Samito's concern is not with the more popular question of how Lincoln's feelings about slavery evolved (or if they did), but rather the continuity and change of his constitutional thinking on slavery.

The book begins with Lincoln's early constitutionalism. Before he was president, Abraham Lincoln opposed the very idea of amending the Constitution. But Lincoln's reverence for the Constitution was more than just garden-variety Founders worship. It was, instead, a profound understanding that the United States's strength flowed from attachment to the laws. It was this attachment that bound the people together and warded off the specter of political violence, whether it assumed the form of mob violence or civil war. Such attachment tended to put the Constitution upon a pedestal, and that precluded ideas of amendment.

The centrality of the Constitution to Lincoln's thinking requires, of course, a more sophisticated analysis than this, a point that Samito grasps. Lincoln's opposition to constitutional amendment was largely in line with Whig Party constitutionalism, and particularly its emphasis on legislative supremacy. Congressional settlement of constitutional controversies was as close as one could come to the People's definitive interpretation. Lincoln, ever the good Whig, embraced this principle.

There were, however, limits to legislative supremacy, prescribed by the Constitution itself. Regarding slavery, this meant that a number of simple propositions had to be respected. First, slavery was a domestic relation and entirely under the control of the states under their power of police. Congress could not order immediate emancipation—that would violate fundamental constitutional law. Second, the Fugitive Slave Act had to be enforced in northern states and state laws that contravened it were null and void. Third, the Congress had plenary power in the territories and could prevent slavery there. Nonetheless, Congress did have to respect other restraints on its power, namely The Fifth Amendment's taking clause.

Lincoln's election precipitated the "secession winter" of 1860-1861. Samito's account tracks Lincoln's backroom maneuvers with Congress while he was president elect. Lincoln quietly supported resolutions affirming federal impotency on the subject of emancipation and even supported a constitutional amendment forever enshrining the principle in the Constitution. Samito struggles somewhat with Lincoln's apparent about-face on the subject of constitutional amendment, although he needn't. Lincoln was a consummate politician and understood that the U.S. government was only as strong as its popular approval. Lincoln was painfully aware that he had just been elected without even appearing on the ballot in half the country. The secessionist argument suggested that Republicans would bend the Constitution to mandate universal emancipation. In the face of such rhetoric, the only body with any authority to turn back a secessionist wave would be Congress. And if they decided to pass a declaratory amendment, so be it.

Which is why it makes sense that Lincoln's actions against slavery continued to connect to Congress, even after he assumed office. Much has been made of Lincoln's expansion of the presidency and whether this violated contemporary understandings of the separation of powers. Likely it did, but it is notable that Lincoln exhibited enormous congressional deference when it came to slavery. True, the Emancipation Proclamation was an executive act, which Lincoln claimed under his Article II powers as commander-in-chief. Nonetheless, as Samito shows, it rested upon a foundation of proposals and even proposed constitutional amendments that Lincoln fed Congress. Neglected by Samito are the confiscation acts, although this evidence frankly supports his thesis. Whatever Lincoln's Article II innovations, on the subject of slavery he worked with and deferred to Congress, and the Emancipation Proclamation must be read in light of this constitutionalism.

Lincoln's caution extended past his signing of the Emancipation Proclamation, much to the chagrin of radical Republicans. Here Samito deftly summarizes many of the constitutional arguments urged upon Lincoln by abolitionists and recounts Lincoln's famous reticence. In his public statements, Lincoln insisted that emancipation should be enacted by the states. Privately, however, he indicated support for an amendment and even for black suffrage. Politics and circumstances allowed Lincoln to make this support public by June of 1864. The Republican victory in November convinced Republicans to bring the amendment to a vote in the House.

Passing the amendment proved a challenge. Samito assesses the evidence of Lincoln and Seward's promises of patronage (or outright bribery) in getting the amendment the supermajority it required, and surveys the challenges it faced for ratification. His prose is lively and swift. Readers curious about how the sausage was made—especially when that sausage is the starting point for a whole new Constitution—will enjoy these chapters heartily.

In a pithy conclusion, Samito considers the meaning and effect of the Thirteenth Amendment. It declared for liberty, but it also left in place the structure of American federalism and citizenship (although this would be shifted by the Fourteenth Amendment). Samito brings his conclusion up to modern day, pointing out how some law professors have urged a renaissance for the Thirteenth Amendment, so that the federal government could assert power over a plethora of issues without having to invoke the Commerce Clause.

Samito is particularly well suited to consider this final issue, given that he holds both a J.D. and a Ph.D in History. His historical chops are beyond dispute and his writing about law is disarmingly simple. To be clear, I mean this last remark as a compliment—lawyers and legal scholars often confound simple issues and meet complex ones by retreating into professional obfuscation. Samito, however, is no pettifogger—he has a knack for making complicated ideas simple. That being said, this reviewer wishes Samito had spent more time delineating differences between the constitutional regimes of 1865 and 2015 and whether we should be reading the Thirteenth Amendment any differently now. But such are my own proclivities. For those who want to read about Lincoln's constitutional thought and the politics behind passage of the Thirteenth Amendment, this is a fine book.

H. Robert Baker is the author of The Rescue of Joshua Glover: A Fugitive Slave, the Constitution, and the Coming of the Civil War, and Prigg v. Pennsylvania: Slavery, the Supreme Court, and the Ambivalent Constitution. He is currently working on a biography of Roger B. Taney and can be reached at robertbaker@gsu.edu.